

Email Alert – UPDATE: *UDC-Universal Development, L.P., v. CH2M Hill*

Morris Polich & Purdy always endeavors to keep its clients and friends updated as to legal developments and other topics of interest in the area of design and construction law. We trust that you will find the following interesting and of use, and if you have any questions or comments please contact any of the attorneys in our Construction and Design Practice Group.

We had previously advised you about a case in which the California Court of Appeal held that a design professional owed an obligation to pay for the defense of its developer client pursuant to a contract of indemnity, even though the plaintiff had not alleged that the design professional had erred, and even though the jury eventually found that the design professional was not negligent in performing its services. In that case, *UDC-Universal Development, L.P., v. CH2M Hill*, the Court of Appeal held that a non-negligent design professional could nevertheless have an obligation to defend the design professional's client simply because the plaintiff's general description of defects in a project implicated the design professional's work.

The design professional in that case sought review from the California Supreme Court or, in the alternative, an order depublishing the Court of Appeal's opinion. The Supreme Court recently denied the design professional's petition, which means that the *UDC* case remains the law in California. Therefore, it will take legislative action to overturn this holding. One such legislative effort is ACEC/California's sponsorship of Senate Bill 972, challenging *UDC* and the case on which it was based, *Crawford v. Weather Shield*. For additional information, please click [HERE](#) to view an ACEC/California Action Alert on the legislation.

At the same time, the result in *UDC* and *Crawford* can be avoided by a contractual provision that explicitly disclaims any responsibility of the indemnitor for the indemnitee's defense. We have assisted many of our clients in crafting appropriate disclaimer language, and would be happy to respond to specific inquiries.

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